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November 29, 2000

Ex Parte

VIA FEDERAL EXPRESS

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW,
Washington, DC, 20554

Re: WT Docket No. 99-87

Dear Ms. Salas:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules. This is to advise that today the undersigned sent, on behalf of my law firm, the attached written *ExParte* presentation to Clint Odum, Legal Advisor to the Chairman, Bryan Tramont, Legal Advisor to Commissioner Furchtgott-Roth, Mark Schneider, Legal Advisor to Commissioner Ness and Peter Tenhula, Legal Advisor to Commissioner Powell.

Should any questions arise concerning this matter, please contact the undersigned.

Respectfully submitted,



Charles M. Meehan

CC: Clint Odum, Esq.
Bryan Tramont, Esq.
Mark Schneider, Esq.
Peter Tenhula, Esq.

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LSABODE

From: Charles M. Meehan <mikemeehan@meehan-law.com>
To: Bryan Tramont <btramont@fcc.gov>
Date: Wednesday, November 29, 2000 9:53 AM
Subject: R&O WT Docket No. 99-87

Bryan:

Now that "Sunshine" is over, I want you to know how pleased I am with the R&O. The BILT portion is exactly what the utility industry needs and is something I have been advocating for over a decade.

I thought you might find the attached Analysis Bulletin of interest. These go to my clients who have requested they receive my Bulletins on key telecommunications business developments.

Best regards, Mike Meehan

11/29/00

From: Charles M. Meehan <mikemeehan@meehan-law.com>
To: Clint Odom <codom@fcc.gov>
Date: Wednesday, November 29, 2000 9:44 AM
Subject: R&O WT Docket No, 99-87

Clint:

Now that "Sunshine" is over, I want you to know how pleased I am with the R&O. I really appreciate all of your support on the BILT issue.

I thought you might find of interest the attached Analysis Bulletin which I send to clients that have requested they receive them.

Best regards, Mike Meehan

11/29/00

From: Charles M. Meehan <mikemeehan@meehan-law.com>
To: Mark Schneider <mschneid@fcc.gov>
Date: Wednesday, November 29, 2000 10:04 AM
Subject: R&O WT Docket No. 99-87

Mark:

Now that "Sunshine" is over, I want you to know how pleased I am with the decisions made by the Commission in this R&O, especially its handling of removing the BILT restrictions. That is a reform that will be important to the utility industry in order to generate new revenue streams as it becomes competitive in its core business. It is something I have been advocating for over a decade.

I thought you might find of interest the attached Analysis Bulletin on the R&O. I send these Bulletins to clients who have requested they receive them on key telecommunications business developments.

Best regards, Mike Meehan

11/29/00

From: Charles M. Meehan <mikemeehan@meehan-law.com>
To: Peter Tenhula <ptenhula@fcc.gov>
Date: Wednesday, November 29, 2000 10:12 AM
Subject: R&O WT Docket No. 99-87

Peter:

Now that "Sunshine" is over, I want you to know how pleased I am with the decisions the Commission made in this proceeding, especially its handling of removing the BILT restrictions. That will be important to the utility industry as a revenue producer as it moves into a competitive market in its core business. It is something I have been advocating for over a decade.

I thought you might find of interest the attached Analysis Bulletin on the R&O. I send these Bulletins to my clients who have requested them on key telecommunications business developments.

Best regards, Mike Meehan

11/29/00

.Charles M. Meehan
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410 778 9380

November 27, 2000

The following is pursuant to your earlier request to receive my Analysis Bulletins.

ANALYSIS OF REPORT & ORDER AND FURTHER NOTICE IN WT DOCKET NO. 99-87

Executive Summary

This month the Federal Communications Commission (FCC) has taken actions in three separate proceedings, which create telecommunications business opportunities for utilities. At the same time, each of these actions could drastically change the way in which utilities meet their internal telecommunications needs in the future.

WT Docket No. 99-87.

The first of these proceedings, the subject of this Analysis, is the Report and Order and Further Notice (R&O) in WT Docket No. 99-87. Here, the FCC removed the commercial use restrictions on the 800 MHz Business, Industrial and Land Transportation (BILT) channels so as to allow licensees to convert their internal use systems into systems serving both public and internal needs, or to freely assign these channels to Commercial Mobile Radio Service (CMRS) operators. The FCC also proposed to remove the commercial use restrictions for the 900 MHz BILT channels.

In the same R&O, the FCC conceded that the use of spectrum for some critical utility operations was within the Public Safety Exemption (PSE) from auctions, but, in the next breath, so limited its applicability that it may really not mean much as to either existing or future "private" allocations.

The FCC also denied the request of the utility, rail and petroleum trade associations to create a Public Service Radio Pool in the bands below 470 MHz.

In this R&O, the FCC also discussed its options for the licensing of future allocations for private and commercial systems. It is clear from this discussion that the FCC favors the use of Band Managers for future allocations. In this licensing scheme, the Band Managers secure their channels at auction, are provided with wide area licenses and then lease the channels to end users. If this scheme is adopted for future private allocations, utilities might be better off participating in these auctions, especially if the FCC permits Band managers to use some of the channels for their own traffic.

ET Docket No. 00-221 and WT Docket No. 00-230.

The other two proceedings, which will be the subject of a future Analysis, are ET Docket No. 00-221, which deals with future private allocations, including the 1400 MHz band, and the role of Band Manager licensing for that band; and, WT Docket No. 00-230, which deals with allowing secondary markets for spectrum where licensees can lease all or part of their channels to third parties. All three of these proceedings have common themes-create market based opportunities for licensees to make beneficial use of their spectrum, and, to require the payment of money for access to spectrum in the future.

Analysis of Actions Taken in Docket No. 99-87.

Removal of 800 MHz BILT Commercial Use Restrictions.

Due to the efforts of a few forward looking utility Exempt Telecommunications Companies (ETC's) and some of the existing CMRS operators, as well as a market place oriented FCC management, the FCC has removed the restrictions found in Sections 90.617(c) and 90.619(b) of the Rules which prevented 800 MHz BILT licensees from using their systems to provide commercial service to the public or to assign their channels to CMRS operators.

This reform of the Rules will allow utility 800 MHz licensees to convert their analog internal use "cost center" systems to digital system "profit centers" which generate revenue by providing service to the public and, at the same time, meet internal needs. This action will also allow such licensees to secure channels from other BILT users and to trade or assign channels with other commercial operators, to help build out their commercial operations. The FCC has proposed to create the same opportunities with the 900 MHz BILT band.

This reform of the rules has been something I have advocated for over a decade since it is critical that as utilities move into a competitive market for their core business they eliminate cost centers and create additional profit centers. By converting their BILT systems to hybrid commercial/internal systems, operated with entrepreneurial management, may be the only way a utility can economically justify operating its own system, since as the FCC observes in the R&O, commercial systems are increasingly meeting needs historically met by internal use systems.

The removal of these restrictions also opens the door to utilities and other 800 MHz BILT users forming consortia to go digital, interconnect their networks and provide commercial service over multi-utility operating areas. I WOULD LIKE YOUR REACTION TO CREATING SUCH CONSORTIA BY RESPONDING TO THIS E-MAIL.

The only conditions that are attached to taking advantage of the removal of the restriction are to prevent trafficking in licenses, and to protect adjacent channel Public Safety operations. None of these conditions should present any burden to existing BILT users. The first condition is that if an initial grant of a BILT license was after November 9, 2000, the date the R&O was adopted, the licensee must hold the license for five years before taking advantage of the removal of the restrictions. The second condition is that a BILT licensee that can, and does go commercial or assigns channels to a commercial operator, must wait one year before going back to the FCC to get additional 800 MHz channels in the same area. The third condition is that

when a system is converted or assigned for commercial operations, the licensee will notify adjacent channel Public Safety licensees and agree to eliminate interference.

Applicability of Public Safety Auction Exemption to Utility Operations.

While the R&O recognizes that some utility operations meet the requirements of the Public Safety Exemption (PSE) from auctions, this may end up not really meaning much. For example, the R&O goes on to hold that the PSE applies to blocks of spectrum, NOT to classes of users.

The PSE would only be of value where there are mutually exclusive applications. In the bands below 470 MHz the channels are generally shared and mutual exclusivity does not arise.

The R&O also holds that the 470-512 MHz band, the 800 MHz BILT band and the 900 MHz BILT band, all heavily used by utilities, shall NOT be exempt from auctions under the PSE, since the "dominant use" of these bands is by persons engaged in a commercial activity to support their business operations, "even if some individual licensees [e.g., utilities] use the spectrum for public safety purposes." If the PSE cannot be used in these bands, where could it be of use? From the R&O's discussion of licensing schemes for future private allocations (Band Managers), the PSE may be of little or no value for future "private" bands. Could it be that the free spectrum gravy train has come into the station and that everyone will have to pay for the spectrum they use?

Use of Band Managers for Future Private Allocations

The R&O makes it clear that it clear that the FCC favors using Band Managers for future private allocations. Under that scheme, the Band Managers obtain their spectrum in auctions, secure wide area licenses and lease spectrum to end users.

The auction price has to be a part of the lease price the Band Manager charges to end-users. The Band Manager has other costs and should be able to make a profit to have a viable business and to pay off the investors that advanced considerable sums so the Band Manager applicants could be successful in the auctions.

In the future, a utility may be better off securing spectrum in auction, rather than leasing from a Band Manager. It only pays the auction price and has "ownership" control of the spectrum. The R&O states that in the future, FCC may allow Band Managers to use some of the spectrum they secure for their internal traffic. This might be an incentive for utilities to participate in future Band Manager auctions. The R&O also holds, in this regard, that users within the PSE may NOT use the PSE if they want to participate in these auctions, but will be treated like any other applicant.

If you do not wish to receive future Analysis, please reply to this e-mail and type "remove" in the subject box.